

Rules of
Department of Revenue
Division 10—Director of Revenue
Chapter 117—Sales/Use Tax—Local Taxes

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Title 12—DEPARTMENT OF REVENUE

Division 10—Director of Revenue Chapter 117—Sales/Use Tax—Local Taxes

12 CSR 10-117.100 Determining the Applicable Local Sales or Use Tax

PURPOSE: Sections 32.085 and 32.087, RSMo, authorize political subdivisions to adopt a local sales tax. Section 144.757, RSMo, authorizes any county or municipality to adopt a local use tax at a rate equal to the rate of the local sales tax in effect in that jurisdiction. This rule explains which local jurisdiction's tax applies to a transaction subject to state sales or use tax. This rule does not address the sale or lease of motor vehicles, trailers, boats and outboard motors.

(1) In general, taxing entities may impose a local sales tax on transactions that are subject to state sales tax. Counties and municipalities may also impose a local use tax at a rate no higher than the rate of the local sales tax in effect in that jurisdiction. When a transaction is subject to state sales tax, the transaction is also subject to the local sales tax adopted by the political subdivision where the seller's place of business is located. When a transaction is subject to state use tax, the transaction is also subject to the local use tax adopted by the county or municipality where the tangible personal property is first delivered in Missouri.

(2) Definition of Term.

(A) Place of business—a place where business is transacted in Missouri and that is maintained, occupied or used, directly or indirectly, by a seller or agent of the seller. A place that is temporarily maintained, occupied or used may be a place of business if all orders received at the temporary location are immediately filled from that location.

(3) Basic Application of Taxes.

(A) Sales Tax.

1. All sales of tangible personal property subject to state sales tax in for which the order is taken at a Missouri place of business are subject to the local sales tax in effect at that place of business.

2. If an outside sales employee or agent who works out of a Missouri place of business takes an order for a sale of tangible personal property subject to state sales tax, the sale is subject to the local sales tax in effect at the place of business from which the employee or agent works.

3. If an outside sales employee or agent who does not work out of a Missouri place of

business takes an order in Missouri for a sale of tangible personal property subject to sales tax, the sale is subject to the local sales tax in effect where the order is taken.

4. If the order is taken outside Missouri for a sale of tangible personal property subject to Missouri sales tax, the sale is subject to the local sales tax in effect where title to the item transfers to the purchaser.

5. A sale of services subject to state sales tax is subject to the local sales tax in effect where the service is rendered or delivered.

6. Metered sales (e.g., natural gas and utilities) subject to state sales tax are subject to the local sales tax in effect where the meter is located.

(B) Use Tax—A sale of tangible personal property subject to state use tax is subject to the local use tax in effect where the item is first delivered in Missouri.

(C) Both Sales and Use Tax.

1. Sales of metered water services, electricity, electrical current and natural, artificial and propane gas, wood, coal or home heating oil for domestic use may be subject to local tax at the meter's location even though they are exempt from state tax.

2. When goods otherwise subject to state sales or use tax are purchased under a resale exemption certificate and later withdrawn from inventory for the purchaser's own use, the goods are subject to the local sales or use tax that would have been due if the original purchase had not been exempt. If the goods are commingled so that the purchaser cannot determine where the goods withdrawn from inventory were originally purchased, the goods are subject to the local sales tax in effect at the location of the purchaser.

3. All provisions of the state sales and use tax law apply to local tax. The tax permits, exemption certificates, and retail licenses required for the administration and collection of state sales and use tax also satisfy the requirements for local sales and use tax.

(4) Examples.

(A) A seller has a place of business in Missouri. The seller's outside sales people work out of seller's place of business in Missouri. These sales people accept orders at customer locations. Goods are shipped from plants and warehouses located throughout Missouri and in other states. Sales to customers located in Missouri are subject to the local sales tax in effect at the seller's place of business.

(B) An outside sales person takes an order in Missouri. The salesperson works out of an office located in a neighboring state. The salesperson fills the order from inventory, the

salesperson carries and receives payment. The sale is subject to the local sales tax in effect where the order was taken. The result is the same even if the seller also has a place of business in Missouri because the salesperson does not work out of the Missouri location.

(C) A manufacturer accepts an order at its office outside Missouri from a customer in Missouri. As part of the sale, the manufacturer delivers and assembles the goods in Missouri. The parties agree that title to the goods transfers after assembly. The sale is subject to the local sales tax in effect where title to the goods transfers. The result is the same even if the seller also has a place of business in Missouri.

(D) A sign manufacturer accepts an order at its office outside Missouri from a customer in Missouri. The customer takes title and possession of the sign at the manufacturer's location outside Missouri and has the sign delivered to the customer's Missouri location. The purchase is subject to the local use tax in effect where the sign is first delivered in Missouri.

(E) A refinery located outside Missouri sells fuel to Missouri customers through an agent located in Missouri. The customers are billed for fuel usage indicated on a meter located at the agent's Missouri facility. The sales are subject to the local sales tax in effect where the meter is located.

(F) A lumberyard purchases lumber exempt from tax because the lumber is purchased for resale. The lumberyard removes lumber from its inventory to build a storage shed at the lumberyard. The lumberyard should accrue tax on the lumber removed from inventory based on the type (sales/use) and rate of tax that would have been paid if the original purchase had not been exempt. If the lumber is commingled with lumber from other suppliers so that the lumberyard cannot determine where the lumber used was purchased, the lumber is subject to the local sales tax in effect at the lumberyard.

(G) A taxpayer operates a mobile food service business. It sells sandwiches and drinks from its trucks. Local sales tax is due based upon the location where the trucks are parked because all orders are taken and filled and all payments are made at that location.

(H) A water company provides service to residents of a community. Local sales tax is due based upon the location of the customers' residence.

(I) Taxpayer has four (4) places of business in Missouri, which participate in a sale. Location A takes the initial order. Location B approves the application for credit. Location C ships the goods from inventory contained



in the warehouse to the customer instate. Location D bills the customer. The applicable local sales tax is the tax in effect at Location A, where the initial order is taken.

(J) A seller located in Kirkwood, Missouri, which is located in St. Louis County, receives an order from a buyer located in Macon, Missouri. The merchandise is shipped to Columbia, Missouri. The sale is subject to Kirkwood city and St. Louis County sales taxes.

AUTHORITY: sections 144.270 and 144.705, RSMo 2000.* Original rule filed Jan. 10, 2002, effective July 30, 2002.

*Original authority: 144.270, RSMo 1939, amended 1941, 1943, 1945, 1947, 1955, 1961; and 144.705, RSMo 1959.

Associated Industries of Missouri v. Lohman, 114 S. Ct. 1815 (1994). The U.S. Supreme Court ruled that a local use tax rate greater than the local sales tax rate is unconstitutional.

Shell Oil Co. v. Director of Revenue, 732 S.W.2d 178 (Mo. 1987). Shell Oil Company purchased aviation fuel from another oil company and then arranged for the delivery and sale of the fuel in Missouri. The title to the fuel passed by contract from the other oil company to Shell Oil, and then from Shell Oil to the airlines, at the time the fuel passed through metering devices located in Missouri. The sale was consummated and was subject to the local sales tax in effect at the Missouri airport.

Mobil-Teria Catering Co. v. Spradling, 576 S.W.2d 282 (Mo. banc 1978). For the purpose of public mass transportation tax and transportation sales tax, "place of business" of mobile food service business referred to place where trucks were parked, wares displayed, initial orders taken and filled, payments made and sales consummated. Orders were taken and the sales were consummated at the sites where the trucks were parked. These sites were outside the taxing jurisdiction and were not subject to the local tax.

Fabick & Co. v. Schaffner, 492 S.W.2d 737 (1973). Salesman working from and out of the taxpayer's place of business in Jefferson City took all orders. The orders were all accepted in Jefferson City. Even though the purchasers were not always in Jefferson City and some orders were shipped from locations outside Jefferson City, all orders were subject to the local sales tax. All orders were consummated at the place of business of the taxpayer in Jefferson City because that is where the orders were taken and accepted.

John Fabick Tractor Co. v. Director of Revenue (AHC 1996). When possession of leased equipment is transferred in Missouri, the lease is consummated at the place of business of the lessor. The monthly lease payments are subject to state and local sales tax regardless of whether the lessee subsequently moves the leased property to another taxing jurisdiction or even out of state.